

**Village of Irvington  
Zoning Board of Appeals**

Minutes of Meeting held July 24, 2001

A meeting of the Zoning Board of Appeals of the Village of Irvington was held at 8:00 P.M. on Tuesday, July 24, 2001, in the Trustees' Meeting Room, Town Hall, Irvington, N.Y.

The following members of the Board were present:

Louis C. Lustenberger, Chairman  
Robert L. Bronnes  
George Rowe, Jr.  
Bruce E. Clark  
Paul M. Giddins  
Brian Barrett

Mr. Lustenberger acted as Chairman and Mr. Giddins as Secretary of the meeting.  
Mr. Barrett acted as an alternate and did not vote on any applications before the Board.

The first order of business was a vote to approve the minutes of the June 19, 2001 meeting. The Chairman moved that the minutes be approved. The motion was seconded and thereupon the minutes of the meeting of June 19, 2001 were approved.

There was one matter on the agenda:

Case No.

**2001-07        Astor Street Associates – South Astor Street (Sheet 7A; Block 230)**

This was a continued matter that had been before the board on one prior occasion, February 27, 2001. The Applicant appeared by John Serasino and by its counsel, Collier, Halpern, Newberg, Nolletti & Bock, LLP, by Stefanie Bashar, Esq.. One objectant appeared, Daniel Greenberg, on behalf of himself and two adjacent owners on Buckhout Street, all of whose properties are directly behind the back of the building in question.

The Applicant did not file with the Board evidence of its compliance with the notice requirements of § 243-98(A) of the Zoning Ordinance. However, Applicant stated that the required notifications were made in the requisite manner and that the proofs thereof would be promptly filed with the Village Clerk.

The Applicant sought a variance from § 243-39E(5)(b) of the Irvington Zoning Ordinance (the “Ordinance”) restricting the height of buildings in the industrial district; from § 243-39E(6)(a) and (b) mandating off street parking spaces, and from § 243-52 prohibiting access to premises through a public parking lot. The Objectant objected to the Applicant’s request to exceed the height limitation because he believed that dwelling units with windows to the rear of the building would intrude on Objectants’ privacy.

The building for which the variances are sought is an unused former power station owned by the Metropolitan Transportation Authority (“MTA”) and located in the

industrial district. The MTA has offered to sell the building to Applicant and Applicant seeks to convert the building to residential use.

The Board noted that Applicant previously sought an interpretation of Ordinance § 243-39E(1), and variances from §§ 7-736 and 243-52 of the Village Law and the Ordinance. By decision dated February 28, 2001, the Board rendered an interpretation of Ordinance § 243-39E(1), granted a variance from the access requirements of Village Law §7-736 and denied Applicant's request for a variance from Ordinance § 243-52 without prejudice to renewing same when development plans for the subject lot were more complete. The Applicant submitted a more detailed development plan at the July 24 meeting.

The Board noted that Ordinance § 243-39E, from which Applicant seeks variances for off-street parking and for building height, was amended in 1996 to empower the Board of Trustees to issue a special permit "to allow for mixed multi-family dwellings and municipal or public facilities and parking related thereto in buildings on the east side of the Railroad District." The amendment further provides that if the applicant for a special permit meets six enumerated requirements, "the Board of Trustees will grant the special permit in accordance with the procedures specified [in] § 243-8.F of this Code." The Chairman noted that Section 243-8F sets forth the procedure for the Planning Board's issuance of a special permit, and that sub-section (6) of that section provides that the Zoning Board of Appeals may submit to the Planning Board an advisory opinion on said application at any time prior to the rendering of a decision by the Planning Board.

After considerable discussion, the Board concluded that the forgoing provisions give the Board of Trustees the sole power to grant departures from the six special permit

requirements listed in § 243-39E. The Board concluded that it did not possess the authority to grant variances from those provisions since any such action would usurp the Trustees' power. The Board also concluded, however, that it does have the authority to issue an advisory opinion to the Board of Trustees on Applicant's request for relief from the special permit requirements. Further, although the Ordinance does not state whether the advisory opinion must first be requested, or simply offered, the Board concluded that it was appropriate to offer an advisory opinion on Applicant's request for parking and height variances.

#### The Board's Advisory Opinion

After noting that the ultimate decision of whether to issue the requested special permit must be rendered by the Board of Trustees, the Board offered the following advisory opinion:

##### **I. Parking Spaces**

With respect to the parking provisions, Applicant seeks approval for 16 off-street parking spaces instead of the required 22. Ordinance § 243-39E(6) provides that as a condition to the issuance of a special permit, an applicant must provide one paved off-street parking space for each dwelling unit in the proposed structure, plus one additional parking space for every 500 square feet of ground floor space not to be used for housing. Applicant has calculated that this formula requires it to provide 22 parking spaces, one space for each of the 19 proposed dwelling units plus three additional spaces for the ground floor space. Applicant's plan submitted at the hearing, dated July 24, 2001, provides for only 16 off-street spaces, six short of the required 22.

Applicant submitted a written statement (Exhibit “B” to the Application) stating that it had been working with the Village and the MTA to assign to the building additional parking spaces from the Metro-North commuter parking lot “on a permanent basis.” Applicant also submitted a letter dated July 24, 2001 from William Everett, Deputy Director of Leasing and Acquisition for the MTA to Peter C. Lilienfield, Chairman of the Irvington Planning Board, stating that the MTA was prepared to designate nine commuter parking spaces in the Metro-North commuter parking lot immediately in front of the building for use by the building’s tenants. Also placed in the record was a June 25, 2001 letter from Stephen A. McCabe, the Irvington Village Administrator, to Mr. Lilienfield, stating that the Village Administrator had advised the Applicant that “based on research by Larry Schopfer and reported to the Village Board, a loss of approximately 9 spaces from the commuter parking lot [to be used for this building] would not be a problem.” Applicant offered these nine spaces to make up for the six-space shortfall. Applicant stated that the MTA (or Metro-North) owns the land on which the nine spaces are located and leases them to the Village pursuant to one-year leases that are renegotiated at the end of each year.

Based upon the foregoing information, the Board hereby advises the Board of Trustees that the transfer of the nine spaces to the building appears adequate to make up the parking shortfall, provided that such transfer is embodied in an agreement, satisfactory in form and substance to the Village Attorney, that is binding on the owner of the land on which the spaces are located, the Village, the Applicant, their successors and assigns, and all subsequent purchasers or transferees of the Building and of the land on which the spaces are located. In addition, this advice is conditioned on the July 24, 2001

plan for proposed dwelling units, submitted at the hearing, being finalized in the same form as submitted at the hearing, subject only to minor changes unrelated to the Ordinance's parking requirements.

## **II. Height Limitations**

Applicant seeks permission for a building height of 57 feet, two more than the maximum allowed by Ordinance § 243-39E(5)(b), which provides that no building shall exceed 55 feet in height or 4 stories. We here address the question of the building's excess height, but for the reason given below, do not pass upon Applicant's request for five stories instead of four.

Applicant intends to convert the building's interior into dwelling units without changing its outside dimensions. The building's existing height exceeds the aforesaid limit by two feet. It could not be lowered without rendering the whole project unfeasible. The Ordinance appears to be directed at new structures, not existing ones, and the excess height is small.

At the June 19 hearing, Applicant stated that all dwelling unit windows would be on the front of the building. However, based on the plans submitted on July 24, it now appears that some dwelling unit windows will be on the building's rear wall, as will windows to common hallways. Applicant has agreed to install opaque glass in all windows on the rear, eastern wall of the building as a condition precedent to being permitted to exceed the height limitation of § 243-39E(6). That solution was acceptable to the Objectant Mr. Greenberg. For the foregoing reasons, the Board hereby advises the Board of Trustees that permitting the existing building to continue to exceed the height

limitation by two feet appears warranted, on condition that opaque glass be placed in all of the windows in the rear, eastern wall of the building.

After discussing its advisory opinion, the Board addressed the Applicant's remaining requests:

The Variance From Ordinance § 243-52

It was noted that access to the proposed building would be solely from the MTA's public parking lot. For that reason, Applicant sought a variance from § 243-52, which provides that no building shall be built or altered so that access thereto is solely from a public parking lot. Applicant sought this same variance in its prior application, at which time the Board stated that although it had no objection in principle to the requested variance, it required more definitive information on how the lot was to be developed before it could pass on the request, particularly as to how many dwelling units would be in the building and how the on-site parking spaces around the building would be configured.

In that Applicant has now submitted the July 24, 2001 plan showing 19 dwelling units and 16 parking spaces placed around the building, the Board voted unanimously to grant the requested access variance after taking into account the criteria required to be considered by Village Law § 7-736(b), and upon condition that the final plan for dwelling units and parking spaces not vary materially from said July 24 plan.

The Variance From Ordinance § 243-39E(5)(b)

The Board took no position on Applicant's request for five stories instead of the four permitted by § 243-39E(5)(b), because it did not have sufficient evidence of the need for the additional story.

Ordinance §§ 243-39E(1)(A) and (B)

The Board noted that there was an open question of whether the Applicant's proposed use satisfied the requirements of Ordinance §§ 243-39E(1)(A) and (B), which state that such buildings be used both for multi-family dwellings and for public facilities "owned or sponsored by the Village." It was noted that the use proposed by the Applicant is solely dwelling units, although pursuant to a proposed agreement with the Village, some of those units are to be rented at affordable rates. Whether such "affordable units" satisfy the specific requirement for a public use "owned or sponsored by the Village" is for the Board of Trustees to determine when it ultimately decides whether to issue the special permit. Accordingly, the Board did not rule on the request for a variance from Ordinance §§ 243-39E(1)(A) and (B).

There being no further business, the meeting was, upon motion duly made and seconded, unanimously adjourned.

/s/ Paul M. Giddins  
Paul M. Giddins